

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

09/26/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2002-000027

FILED: _____

NEDKA PETROVOVA

GREGORY T PARZYCH

v.

STATE OF ARIZONA

GARY L SHUPE

FINANCIAL SERVICES-CCC
PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #8970392; 8970393

Charge: DUI;
DUI W/A.C. OF .10 OR HIGHER

DOB: 11/08/74

DOC: 05/11/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since the time of oral argument and this Court has considered and reviewed the record of the proceedings from the Phoenix City Court and the memoranda and arguments submitted by counsel.

The only issues presented in this appeal by the State of Arizona is the legal question of whether the trial judge properly gave Appellee, Nedka Petrovova, credit for 90 days time served at the time of sentencing, over the Appellant/State's objection.

The facts in this case do not appear to be in dispute. In this case, Appellee, Nedka Petrovova, was arrested and charged on May 11, 2000 with the crimes of Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor offense in violation of A.R.S. Section 28-1381(A)(1); and Driving with a Blood Alcohol Content in Excess of .10, a class 1 misdemeanor offense in violation of A.R.S. Section 28-1381(A)(2). Prior to Appellee's scheduled appearance in the Phoenix City Court, Appellee was also charged in the Maricopa County Superior Court in CR 2000-011742 (another DUI charge). Appellee was arrested on October 4, 2000 and was placed in custody for this Superior Court charge. Appellee's pretrial disposition conference was scheduled on October 9, 2000 in the Phoenix City Court. Appellee failed to attend because she was in custody on the Superior Court felony charge. The Phoenix City Court judge issued a warrant for Appellee's arrest and set bond of \$1,000.00 in the Phoenix City Court case. That warrant was never quashed or executed until Appellee appeared in person in the Phoenix Municipal Court on March 8, 2001. Between October of 2000 and March of 2001, Appellee plead guilty to the Superior Court DUI charge and served at least 90 days in jail for that offense. The Phoenix City Court warrant was never served or executed upon Appellee, nor was her release on the Superior Court charges prevented by virtue of the existence of the Phoenix City Court warrant. This Court must, therefore, conclude that Appellee was not "in custody" between October, 2000 and March, 2001 on the Phoenix City Court charge.

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A.R.S. Section 13-709(B) provides:

All time actually spent in custody pursuant to an offense until the prisoner is sentenced to imprisonment for such offense shall be credited against the term of imprisonment otherwise provided for by this chapter.

Finding no dispute as to the facts, this Court concludes that the trial judge erred in construing the above quoted statute and crediting Appellee 90 days time-served for time that Appellee served on a Superior Court DUI offense, unrelated to the charges pending before the Phoenix City Court. Appellee was not "in custody" between October, 2000 and March, 2001 on the Phoenix City Court charges. The trial judge abused his discretion in giving Appellee credit for time-served.

IT IS THEREFORE ORDERED reversing the sentence and order crediting Appellee time-served by the Phoenix City Court.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for a new sentencing consistent with this opinion, and for all further and future proceedings in this case.